

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
D. W. GAHRINGER, d.b.a. CREATIVE )  
ENGINEERING AFFILIATES, )  
Appellant, )  
vs. )  
STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )  
and CHRIST R. PERG, )  
Respondents. )

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PCHB No. 147

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

This matter, the appeal of the Department of Ecology's decision to issue a permit to Christ R. Berg under Surface Water Application Number 22478, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer) at a formal hearing in the Chelan City Hall at 1:30 p.m., June 13, 1973.

Appellant was present pro se and respondent, Department of Ecology, was represented by Charles W. Lean, Assistant Attorney General. Olive Blankenbaker, Yakima court reporter, recorded the

1 proceedings.

2 Witnesses were sworn and testified. Exhibits were admitted.  
3 Closing arguments were made.

4 From testimony and arguments heard, exhibits examined and  
5 transcript reviewed, the Pollution Control Hearings Board makes  
6 these

7 FINDINGS OF FACT

8 I.

9 On August 18, 1970, Christ R. Berg, now deceased, made Surface  
10 Water Application Number 22478 to the Department of Ecology for a  
11 permit to withdraw for domestic supply one-tenth of a miner's inch  
12 of water (under a four-inch head this equals 0.9 gallon a minute)  
13 from Granite Creek, a tributary to Lake Chelan, Chelan County. The  
14 application subsequently was amended by the Department to an applied  
15 amount of 0.01 cubic foot a second (cfs) (equal to 4 1/2 gallons a  
16 minute). The application, for a water system installed and in use,  
17 was made after Mr. Berg, appellant and other owners of plated lots  
18 or Granite Creek had discussed, but not activated, a community water  
19 system.

20 II.

21 The Department of Ecology made a field examination and a  
22 search of water certificates issued by the state after adoption in  
23 1917 of the state's water code. A measurement during the spring  
24 runoff in April, 1971, showed 0.03 cfs (twelve gallons a minute)  
25 emerging from the lowest point of diversion in the Berg system.  
26 An estimate of the creek made in a low water period of October, 1970,

1 was for 0.2 cfs; the Department's low-flow estimate for the creek  
2 is 0.1 cfs.

3 The Department of Ecology found one water certificate, issued  
4 in 1950 to appellant's father, J.E. Gahringer, for 0.05 cfs for  
5 domestic supply and beautification.

6 The Department of Ecology, delaying action on the application  
7 in the belief that it might be supplanted by an application for a  
8 community water system, finally ordered the permit to issue on  
9 May 17, 1972. The amount approved was for 0.01 cfs, the minimal  
10 amount granted by the Department in Eastern Washington for domestic  
11 use of surface water permits. The permit further was limited to a  
12 withdrawal of 1 acre-foot a year (0.8 gallon a minute on a continuous  
13 flow basis).

14 III.

15 Appellant fears that if each of the owners of the some 20  
16 plated lots at Granite Creek were to obtain water certificates  
17 based on a pre-1917 deed provision of one-tenth of a miner's inch  
18 of water per lot, the creek would be depleted of water to adverse  
19 effect on property values.

20 IV.

21 The state's Surface Water Code (RCW 90.03) requires the  
22 Department of Ecology to grant permits if (a) public waters are  
23 available, (b) a beneficial use is requested and (c) the proposed  
24 diversion of water is not detrimental to public interest or prior  
25 water rights.

26 From these Findings, the Pollution Control Hearings Board comes  
27 to these

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

CONCLUSIONS

I.

It is conceded by appellant and the Department of Ecology that the best solution to the domestic water supply problem at Granite Creek would be the development of a community system. For reasons unknown to this Board, such a system has not been developed.

II.

Mr. Berg (and his heirs), seeking to protect his right to water, should not be forced to wait for the uncertain development of a community system.

III.

The Department of Ecology, receiving an application for surface water withdrawal, is required to grant same if it finds that it meets the three-part test in RCW 90.03. Mr. Berg's application meets those tests: there is public water available, domestic use is a beneficial one and the minimal withdrawal in the permit application, being one-third the amount capable of flowing through the already-developed system, cannot be construed to be detrimental either to public interests or prior water rights. The application was granted on the above basis and not on the basis of any pre-1917 deed whose validity must be adjudicated in Superior Court and not either by the Department or this Board.

Therefore the Pollution Control Hearings Board makes this

ORDER

The appeal is denied. Surface Water Application Number 22478 is approved subject to being incorporated in a community water

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

and at such time as the  
system if/same is approved eventually by proper authorities.

DONE at Lacey, Washington on the 6<sup>th</sup> day of July, 1973.

POLLUTION CONTROL HEARINGS BOARD

Walt Woodward  
WALT WOODWARD, Chairman

W. A. Gissberg  
W. A. GISSBERG, Member

James T. Sheehy  
JAMES T. SHEEHY, Member